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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,061	01/02/2002	Boas Betzler	POU901066US1	9115

46369 7590 06/20/2006

HESLIN ROTHENBERG FARLEY & MESITI P.C.
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ALBANY, NY 12203

EXAMINER

SCUDERI, PHILIP S

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/039,061

Applicant(s)

BETZLER, BOAS

Examiner

Philip S. Scuderi

Art Unit

2153

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

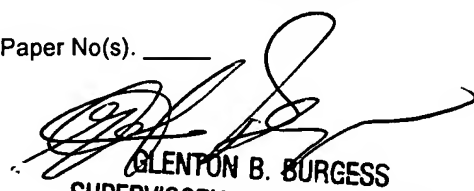
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheets.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


GLENON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

ADVISORY ACTION

Applicant's arguments filed on 05 June 2006 have been fully considered but they are not persuasive. Therefore, pending claims 1, 2, 6-8, 10, 11, 15-18, 20-22, and 26-28 all stand rejected.

Applicant contends that U.S. Publication No. 2003/0112823 to Collins et al. ("Collins") does not teach "responsive to the employing, establishing by the first wireless device direct instant messaging communication between the first wireless device and a second wireless device without further employing the instant messaging server" (response, pages 2-4).

The examiner agrees that Collins does not teach the limitation in reference to figure 4a because the invitation is directed through the rendezvous service (the instant messaging server) (paragraph 0039, lines 9-10). However, in reference to figure 4b, Collins shows a system that meets the claims.

In references to figure 4b, Collins teaches a situation wherein device 100 establishes a direct connection to device 112. If a first attempt to establish a direct connection fails, then "device 100 now attempts, in step 520, to establish communications flow 410 with device 112." (paragraph 0040, lines 26-28). As shown in figure 4b, establishing communications flow 410 does not employ rendezvous service 400. In reference to figure 4b, device 100 corresponds to the claimed first wireless device, device 112 corresponds to the claimed second wireless device, and rendezvous service 400 corresponds to the claimed instant messaging server.

Applicant contends that paragraph 0023 of the specification defines a piconet as "a network of devices connected in an ad hoc fashion using direct connection wireless technology, such as Bluetooth technology (response, page 5).

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The examiner respectfully disagrees. The specification clearly states that “a piconet is used herein to mean any wireless network with direct peer-to-peer capabilities” (paragraph 0023, lines 11-13) (emphasis added).

As the examiner stated in the last Office action, the claims read on establishing a direct connection between two instant messaging clients. Examples of instant messaging clients that the examiner was referring to are AOL Instant Messenger (AIM) clients, MSN Messenger clients, and ICQ clients. The Collins reference is merely an example of an instant messaging client that establishes a direct connection and happens to read on the claims.

Based on the examiner's knowledge of the art, it is likely that other prior art references exist that teach generic instant messaging clients that login to a centralized instant messaging server and establish direct connections based on a list of active clients (e.g., an AIM buddy list) sent from such a centralized server. In fact, in reference to figure 4a, Collins states that “[t]he invitation is sent to the rendezvous service rather than directly to the device 100” (paragraph 0039, lines 9-11) (emphasis added), which suggests that in systems prior to the Collins reference the invitations were sent directly and not through a rendezvous service.

The invention disclosed in the specification almost certainly contains differences from such prior art systems. However, such differences are currently not brought out in the claims. To advance prosecution of the instant application, the examiner recommends bringing such differences out in the claims.

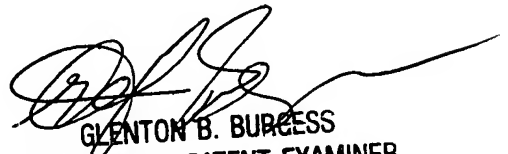
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip S. Scuderi whose telephone number is (571) 272-5865. The examiner can normally be reached on Monday-Friday 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PS


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